

Serial No. 10/743,598

Dkt.: P-11209.03

Filing Date: December 22, 2003

Title: EXTRACORPOREAL BLOOD CIRCUIT AIR REMOVAL SYSTEM AND METHOD

Remarks

Claims 1-50 were withdrawn from consideration due to a restriction requirement. Applicants respectfully reserve the right to file one or more divisional applications seeking claims of the scope of claims 1-50. The Office Action rejected claims 51-61 under 35 U.S.C. Section 103(a) as being unpatentable over U.S. Pat. No. 6,960,322 to Stringer et al. in view of U.S. Pat. No. 4,607,520 to Dam.

The Office Action acknowledges that Stringer et al. does not anticipate the pending claims. For example, Stringer fails to disclose an upper air sensor comprising first and second piezoelectric elements and a lower air sensor comprising third and fourth piezoelectric elements. Instead, Dam is supplied. However, at most, Dam discloses a transmitting transducer 22 and a receiving transducer 24. There are no third and fourth piezoelectric elements disclosed. Thus, even if all of the teachings of Stringer et al and Dam are combined, the combination still fails to disclose the claimed invention.

The Office Action offers an argument in order to cure the deficiencies of Stringer et al. and Dam. The Office Action stated, "it has been held that the[re] mere duplication of the essential working parts of a device involves only routine skill in the art." Claim 51 is herein amended to set forth that the upper air sensor is at a different level than the lower air sensor. If the air sensor were merely being duplicated, why wouldn't it be at the same level? Applicants respectfully submit that the rejection of independent claim is hindsight reconstruction of the claimed invention and should be withdrawn.

Furthermore, claim 51 has been amended to state that the upper air sensor and lower air sensor have components that are spaced apart different distances. If one of ordinary skill in the art were merely seeking to "duplicate essential working parts," then the spacing would be the same. Thus, it is respectfully submitted that the rejection based on Stringer et. al., Dam and the "duplication of essential working parts" argument should be withdrawn in light of amended claim 51.

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Reconsideration and withdrawal of the rejections of the claims, in view of the remarks and amendments presented herein, is respectfully requested.

A supplemental information disclosure statement and a petition for a three month extension of time accompany this amendment.

Applicants respectfully submit that an interview may be useful in reducing the issues in this case. The Examiner is invited to telephone Applicants' attorney at (763) 391-9661 to facilitate prosecution of this application.

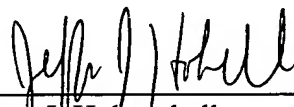
Conclusion

Applicants respectfully submit that claims 51-61 are in condition for allowance, and notification to that effect is earnestly requested.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 13-2546.

Respectfully submitted,

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